IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 543 of 2004.

Date of Decision: 2-1-2007.

Bhag Devi . Petitioner.

Versus

Union of India and others. Respondents.

Coram:

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice S.S.Thakur, J.

Whether approved for reporting[1]?

For the petitioner : Mr. S.C. Sharma, Advocate.

For the respondent No.1 &2: Mr. Sandeep Sharma, Senior Central Govt. Standing Counsel.

SURINDER SINGH, J. (oral)

Bir Bahadur Singh was enrolled in R.V.C. Corps on September 28, 1951 as a "Boy" at the age of fifteen years. He was mustered as Recruit Dresser on September 28, 1953 on attaining the age of seventeen years. He retired on September 28, 1974 from the Service in the rank of Havildar. Thereafter, he applied to the Records Office of R.V.C. Centre Meerut Cantt on January 28, 2002, to correct the name of the nominee as "Smt. Bhag Devi" in place of Smt. "Kamla Kumari" who was shown as his wife which fact was not correct. In response thereto, Bir Bahadur Singh had received following communication from the Records Office:

Whether reporters of the Local papers are allowed to see the judgment?

"Tele : 647186/6611 Remount Va Pashuchikitsa Corps Abhileskh
Remount and Veterinary Corps Records
Post Box No.: 111
Meerut Cantt – 250001

R/7230083/NE-III Feb 06, 2002.

No.7230083 Dfr (Dsr)
Bir Bahadur Singh
Vill- Hari Kantage
The – Chhota Shimla Kasumpti
Distt- Shimla (H.P.)

PUBLICATION OF PART II ORDER

1. Refer to your application dated nil.

2. It is seen from your documents that you have been married to Kamla Kumari on Jan 59 vide AFD Factory DO Part II No 19/16/11. Accordingly, nomination has been changed.

3. Change of name from Kamla Kumari to Bhag Devi after lapse of 43 yrs is not feasible at this belated stage."

Sd/-

(Sagar Sharma)
Capt.
Record Officer
for Officer-in-charge Records"

Thus, he filed the instant petition against the respondents including Kamla Kumari who was shown as his wife on the ground that neither he had married to Kamla Kumari nor she was ever shown as his nominee by him voluntarily in the service record. The existence of the nomination in favour of Kamla Kumari is said to be due to inadvertence at the instance of his colleagues and he also did not know the consequences of such a nomination. He remained unmarried till he had married Bhag Devi in the year 1975, who gave birth to a son Manoj Negi and a daughter Sujata Devi who is now married. He also annexed copy of the Parivar Registrar (Annexure-D) and Himachali Certiicate

(Annexure-E). According to him, Smt. Bhag Devi should have been shown as his wife as applied for and the letter dated 6.2.2002 (Annexure-C) refusing to change the name was illegal. Therefore, sought appropriate writ/direction against the respondents.

Efforts were made to serve Smt. Kamla Devi, respondent No.3, but her presence could not be procured on the address given by the petitioner. Ultimately, an effort was made to procure her presence by substituted service. Thus, a proclamation along with notices was ordered to be served by affixation by pressing into service Order 5 Rule 20 of the Code of Civil Procedure. Even thereafter, she did not put in appearance and as such, preceded ex-parte. In between, the petitioner had died and Smt. Bhag Devi was substituted in place of the petitioner under Order 22 rule 3 of the Code of Civil Procedure.

Reply was filed by the respondents No.1 and 2. According to them, the marriage of deceased Bir Bahadur Singh stood notified vide AFD Factory Daily Order Part II no. 19/16/71. According to this notification, he had married to Smt. Kamla Kumari on 15-1-1959. Photo copy of the Kindred Roll (Annexure-R1) was also placed on the record along with nomination (Annexure-R2), Nomination-Form for death-cum-retirement gratuity (Annexure-R3) and declaration regarding marriage (Annexure-R4) which was duly counter signed by the then Officer of Command (Annexure-R5). Even at the time of transfer of Bir Bahadur Singh to Pension Establishment, said Shri Bir Bahadur Singh had nominated Smt. Kamla Kumari as his wife to receive

the pensionary benefits and arrears if any after his death. Copy of IAFY-1948, the discharge roll (Annexure-R6) is also placed on record. All these documents are signed by said Shri Bir Bahadur Singh. It was specifically averred in the reply that the request of deceased Bir Bahadur Singh for entering the name of second wife could not be considered by the Records Office of RVC being contrary to the existing policy as there was no intimation regarding the death or divorce of the first wife, Smt. Kamla Kumari.

In rejoinder, it is submitted by Smt. Bhag Devi, that Sainik Welfare Board has shown Shri Manoj Negi as a ward dependent of deceased Shri Bir Bahadur Singh. The request of Shri Bir Bahadur Singh was legal and genuine and Smt. Kamla Devi was a non-existent entity.

We have carefully heard the learned counsel for the parties and have examined the record.

As a matter of fact, the contentions raised by Shri Bir Bahadur Singh in his writ and after his death by Smt. Bhag Devi are quite contrary to the official record maintained by the respondents No.1 and 2 in discharge of their official duties. The perusal of the record filed by the respondents, referred above, clearly shows that earlier the nomination was in the name of Mohan Maya, the mother of Bir Bahadur Singh, thereafter, said Shri Bir Bahadur Singh had certified his marriage with Smt. Kamla Kumari having taken place on 15-1-1959 as per the Hindu rites and Ms. Kamlesh Kumari has been shown as daughter of Shri Bir Bahadur Singh having taken birth on 15.2.1965 from

such a wedlock. This declaration finds mention in kindred roll Annexure-R5. These entries have been verified in the Kindred Roll from time to time by the competent authority. The nomination form Annexure-R2 is in the name of “Kamla Kumari” as his wife. Even in column no. 5, Ms. Kamlesh Kumari has been shown as his daughter. The declaration of changes in the kindred Roll have been signed by said Shri Bir Bahadur Singh and counter signed by the Inspecting Officer from time to time. All these entries are consistent in the record which have been disputed by Shri Bir Bahadur Singh in this petition. The claim of deceased Bahadur Singh is highly disputed. In view of the existing entries in the service record, more specifically when it is not known whether Smt. Kamla Kumari is alive or dead. During the subsistence of the first marriage, the second marriage becomes void. In that event, Smt. Bhag Devi who claims herself to be the wife of deceased cannot be said to be the legally wedded wife of deceased Bir Bahadur Singh in view of Section 5 and 11 of the Hindu Marriage Act nor she can become entitled for any family pension since these facts are highly disputed. Therefore, the matter cannot be decided in the writ petition on affidavits. As such writ is dismissed. However, we keep it open, for the determination by Civil Court of competent jurisdiction in view of the disputed and complicated facts and Smt. Bhag Devi may seek the declaration regarding her status qua the deceased Bir Bahadur Singh. In case she files the suit, she shall implead Kamla Kumari and Kamlesh Kumari both as defendants in the

said suit, as without impleading them, no effective decree could be passed, as rights of both the parties are to be determined.

The petition is accordingly disposed of with no order as to costs.

(Deepak Gupta), J.

(Surinder Singh), J.

January 2, 2007.
(BM)